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Supreme Court of the United States

OCTOBER TERM, 1930.

Number [redacted] 4

THE HARDWARE DEALERS MUTUAL FIRE INSURANCE COMPANY OF WISCONSIN,

Appellant,

vs.

THE GLIDDEN COMPANY, ET AL.,

Appellees.

JURISDICTIONAL STATEMENT.

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Supreme Court of the United States

OCTOBER TERM, 1930.

Number 665.

THE HARDWARE DEALERS MUTUAL FIRE INSURANCE COMPANY OF WISCONSIN, *Appellant*,

vs.

THE GLIDDEN COMPANY, ET AL., *Appellees*.

JURISDICTIONAL STATEMENT.

The present appeal was taken to review and reverse a final judgment against appellant, rendered by the Supreme Court of the State of Minnesota, such court being the highest court in that state in which a decision could be had of the subject in controversy, as the printed record in this Court has not been received, reference to the paging will be to the printed record in the lower court.

CHRONOLOGY.

The judgment appealed from was rendered and entered in the Supreme Court of Minnesota, December 8th, 1930.

Appellant's petition for appeal, accompanied by its Assignment of Errors and prayer for reversal were presented to the Chief Justice of the Supreme Court of said state, December 18th, 1930.

On the last mentioned date (December 19th, 1930), the Chief Justice of said Court signed the usual Order allowing such appeal and directing that the record therein be certified and transmitted as required by law, to the Supreme Court of the United States.

On the same date, the aforesaid Chief Justice approved the bond or undertaking on appeal prescribed by appellant, in the sum of Ninety Thousand ($90,000) Dollars and signed an Order allowing such bond as a supersedeas.

On the same date, the aforesaid Chief Justice signed a citation, addressed to the appellees in the usual form.

On or about the same date, service of the citation was made on the counsel for appellees and the original citation, with admission of such service, returned to the Clerk of the Supreme Court of the State of Minnesota.

The record on such appeal as stipulated by the parties, was certified and transmitted to the Supreme Court of the United States within thirty (30) days from the date of the Order allowing the appeal.

Such record was filed in the office of the Clerk of the Supreme Court of the United States; the appeal docketed on the October Term calendar for 1930, and assigned Number [redacted] on said calendar on the 17th day of January, 1931.

STATEMENT.

There was drawn in question by the final judgment of the Supreme Court of Minnesota in this cause, the validity of a statute of that state on the ground of its being repugnant to the Constitution of the United States (more particularly the Fourteenth Amendment) and the decision responsive to

which such final judgment was rendered, was in favor of the validity of such statute.

The question arose in a suit instituted, according to the accepted local practice, against several fire insurance companies, of which, appellant was one, to recover the amount of an award determining the aggregate loss and damage to the subject-matter of insurance covered by all the several policies issued by the defendants in a sum slightly exceeding $70,000.00 (R. 2-16).

The arbitration or appraisal resulting in the award indicated and upon which, as stated, the suit was brought, was had responsive to the local statutes of Minnesota, making such arbitration *compulsory*.

Neither appellant or either of the other insurers in any wise appeared or participated in the arbitration or directly or indirectly consented thereto.

The statute prescribing the compulsory arbitration is included in an Act of the legislature of Minnesota adopting what is ordinarily termed a "Standard Form" of fire insurance policies required to be used by all insurers of that class in the state.

General Laws of Minnesota, 1913, Ch. 421.
Mason's Minn. Statutes, 1927, Sec. 3512.

In the original Act to revise and codify the insurance laws of that state and which provided for the Standard Form of policy contract, the provision with respect to the arbitration of the amount of loss and damage was in almost identical language with that customarily employed in the older forms of such policies in general, under which such arbitration was not compulsory but *was made a condition precedent* to any action on the policy.

General Laws of Minnesota, 1895, Ch. 175, Sec. 52.

This provision as corrected by an amendment changing a single word, adopted in 1897, read as follows, after providing for the arbitration or appraisal of the loss and damage:

"And such reference unless waived by the parties shall be a condition precedent to any right of action in law or equity to recover for such loss."

General Laws of Minnesota, 1897, Ch. 254.

This provision as last indicated was carried verbatim into the Revised Statutes of that state for 1905 and remained effective until the Amendment of 1913, making arbitration of loss and damage compulsory.

General Laws of Minnesota, 1913, Ch. 421.
Mahon's Minnesota Statutes, 1927, Sec. 3512.

In passing it may be noted that while a large number of the states have, by legislation, prescribed Standard Forms of policies of insurance, *Minnesota is the only state which has assumed to legislate the requirement of compulsory arbitration indicated.*

It must further be observed that as interpreted by the Supreme Court of Minnesota, an award rendered under this statute is conclusive, no right of appeal being reserved or any revisory jurisdiction being vested in the courts of the state.

The effect of the state in ordinary operation and as applied to appellant in the instant case, was to deny all recourse to the courts with respect to the all important feature of the amount of loss and damage which, in the ordinary case, is tantamount to the determination of liability.

By other provisions of the statutes, the compliance with all of the several laws of the state with respect to the business of insurance; the adoption and use of the prescribed

form of policy, etc., are made conditions precedent to the carrying on and conduct of such business within the state and violation of such provisions visited with criminal consequences.

Mason's Minn. Statutes, 1927, Secs. 3612, 3615, 3616 and 3560.

Appellant was and is a corporation of the State of Wisconsin (R. 3). The statutes of Minnesota provided that with respect to such foreign corporations, a license should be required as a condition to carrying on business in the state. Generally it was provided that such companies should observe all the conditions of the local laws with respect to such business and that violation of any such laws should be visited with a revocation of the license.

Mason's Minnesota Statutes, 1927, Secs. 3711, 3713.

As respects the effect of these various laws, the Supreme Court of Minnesota has held that recognition and observance of all their requirements is compulsory; that the prescribed form of policy is not only the contract between the parties but the law governing their respective rights and that regardless of the form of contract issued, the provisions of the statute are to be interpolated thereon by implication.

The obvious result is that the right of conducting the business in question within that state was conditioned on appellant's consent to the system of compulsory arbitration, thereby relinquishing its constitutional rights (1) due process of law, (2) the equal protection of the law, and (3) the liberty of contract in so far as the latter extended to reserving to itself the ordinary right of recourse to the courts, extended generally to all other lines of business and all other persons. These rights could neither be surrendered nor relinquished by the requirement of any local law without

violation of the provisions of the Fourteenth Amendment.

Terral vs. Burke Construction Co., 257 U. S. 529.
Insurance Co. vs. Morse, 20 Wall. 445.
Barron vs. Burnside, 121 U. S. 186.
Southern Pacific Co. vs. Denton, 146 U. S. 202.
Frost vs. Railroad Commission, 271 U. S. 583.
Hanover Ins. Co. vs. Harding, 272 U. S. 494,

To avoid any misconception, it may be added at this point that appellant is not questioning the general right of the states with respect to prescribing Standard Forms of policies of insurance.

German Alliance Ins. Co. vs. Kansas, 233 U. S. 389.

It is solely contesting the right to interpolate on the form of contract thus provided, a provision making the ascertainment of the amount of loss and damage under such contract by arbitration or appraisal compulsory without insuring any right of income to the Court and thus denying the right of ordinary redress in the courts.

It insists that there is a broad distinction between prescribing the terms of a contract and prescribing the methods by which such contract may be enforced and that it does not follow because the former may be held within the proper scope of the power of police, that that power extends to or embraces the latter.

It contends further that the feature last mentioned falls clearly within the language of this Court in *Coppage vs. Kansas*, 236 U. S. 1, as follows:

> "Now, it seems clear to us that a statutory provision which is not a legitimate police regulation cannot be made such by being placed in the same act with a police regulation, or by being enacted under a title that declares a purpose which would be a proper object for the

exercise of that power. 'Its true character cannot be changed by its collocation' as Mr. Justice Grier said in the *Passenger Cases*, 7 How. 283, 459."

A similar broad distinction must be made between the legal effect of an award had pursuant to the voluntary agreement of the parties concerned and one resulting from a compulsory requirement of arbitration imposed by law.

The contention that a contract, the terms of which are fixed by law; the acceptance of which is enjoined on the parties and where the provisions of the law are interpolated regardless of its provisions, is a voluntary contract, is wholly untenable in principle and apparently abandoned by the Supreme Court of Minnesota in the present case.

The assumption the resultant act is voluntary because accepted as the alternative of going out of business is sufficiently answered by the terse language of Mr. Justice Lamar in *German Alliance Insurance Company vs. Kansas*, *supra*, as follows:

> "That reasoning would support any statute, for every citizen at least has the right to go out of business. But it has been repeatedly held by this Court that such an answer cannot sustain an invalid statute, the Constitution being intended to secure the citizen against being driven out of business by an unconstitutional statute or regulation."

The pointed allusion by Mr. Justice Holmes in *Block vs. Hirsch*, 256 U. S. 135, 157, is equally pertinent:

> "The power to go out of business, when it exists, is an illusory answer to gas companies and water works, but we need not stop at that."

The language of Chief Justice Taft in delivering the opin-

law of the Court in *Hanover Ins. Co. vs. Harding*, 272 U. S. 494, forecloses discussion on any such untenable theory:

> "One argument urged against our conclusion is that the relation of a foreign insurance company to the state which permits it to do business within its limits, is contractual, and that by coming into the state and engaging in business on the conditions imposed, it waives all constitutional restrictions, and cannot object to a condition or law regulating its obligation, even though, as a statute operating *in invitum*, it may be in conflict with constitutional limitation. This argument cannot prevail in view of the decisions of this Court in well considered cases."

The situation in this regard is not essentially different from what it would have been, had the statute prescribed that the Standard Form of policy should include a condition or stipulation, that the defendant would not remove any suit originating thereunder into the courts of the United States.

Terral vs. Burke Construction Co., supra.
Barron vs. Burnside, supra.

As applied in practice and sustained by the judgment here appealed from, if an insurer declines to submit to arbitration, the assured, having made a demand therefor and designated an arbitrator, may apply to some judge of a local court for the appointment of an umpire. The tribunal thus constituted may arbitrate and determine the amount of the loss. The finding is conclusive, no right of appeal or judicial review being reserved.

It should require no argument to demonstrate that if the particular scheme thus conceived is within the constitutional power of the legislature, a variety of different schemes, hav-

ing the same ultimate objective, would be equally permissible. The particular machinery is largely unimportant if the validity of the principle be upheld.

If such schemes may be applied to insurance losses, no reason suggests itself why the same might not be extended to innumerable other lines of business, as, to illustrate, losses to property by common carriers or accidents arising out of personal injury.

Results of this character were attempted by early statutes in the respective states of Montana and Colorado and in both instances, held unconstitutional by the Supreme Courts of those states as violative of the Fourteenth Amendment.

Graves vs. Northern Pacific Ry., 5 Mont. 566.

Wadsworth vs. Union Pac. Ry., 18 Colo. 600.

The Procedure in the State Courts.

The award, as already indicated, was made in a proceeding in which neither the appellant or other insurers involved, participated.

It was followed by a suit instituted according to the permissible local practice, against all of the insurers.

Each of the insurers, by its several Answer in the court of original jurisdiction, challenged the validity of the award on the ground of the invalidity of the statute of the state under which the award was rendered (R. 21).

The statute was challenged as violative of the requirements of the Fourteenth Amendment in denying (1) due process of law, (2) equal protection of the law, and (3) the liberty of contract.

On the trial in the court of original jurisdiction, the plaintiffs (appellees) established that they had followed the statutory procedure as respects (1) appointing an arbi-

trator, (2) demanding a similar appointment by the insurers, (3) failure of the latter to make such appointment, (4) application to a local judge for the designation of an umpire, and (5) the rendition of the award by the originally appointed arbitrator and designated umpire.

There was no evidence offered before the Court of the amount of loss and damage sustained, other than the award itself (R. 23-43).

The insurers (defendants) offered no evidence (R. 57).

Issues having been previously framed for submission to a jury, at the close of the evidence, the defendants severally moved for a directed verdict assigning as the ground of such motions, the invalidity of the award by reason of the unconstitutionality of the statute pursuant to which it was rendered as contravening the provisions of the Fourteenth Amendment (R. 57).

Defendants' motions for a directed verdict were denied and exceptions seasonably reserved. The trial court thereupon directed a verdict in favor of the plaintiffs (appellees) for the full amount of the award as rendered ($77,001.46), reserving for itself the question of apportionment between the several insurer defendants (R. 57-58).

Thereafter, the trial court made its Findings of Fact, apportioning the liability amongst the several defendants and ordering the rendition of several judgments against them in the amounts as thus ascertained, the judgment rendered against appellant being slightly in excess of $8,600.00 (R. 59-73-77-78).

From the judgments as thus rendered, each of the defendant insurers appealed to the Supreme Court of the state (R. 78-79).

As in the lower court, the only question raised on the appeal was as to the validity of the statute, pursuant to

which, the award will remain. The other questions in the latter regard were raised on the appeal that were passed below, as already indicated.

The decision of the Supreme Court sustained the validity of the statute and affirmed the judgments rendered below. It was specifically found and determined by the opinion of the Supreme Court that the statute was not invalid on the grounds urged by the appellants and that that statute did not contravene the provisions of the Fourteenth Amendment. Final judgment was accordingly entered in that court.

By stipulation filed in that court, it was agreed that in the event of an appeal to the Supreme Court of the United States, that such appeal might be taken on behalf of either of the insurers from the judgment rendered against such insurer and that the other causes should abide the event, conditioned on the filing of a bond to be approved by the Court in sufficient amount to cover the aggregate liability of all the defendants.

Appellant thereupon filed its bond or undertaking in the form required by statute. Such bond, as already stated, was approved by the Chief Justice of the Supreme Court of the state as a supersedeas and a stay order entered in all of the several cases awaiting the event of the present appeal.

Jurisdictional Statement.

(a) The statutory provision sustaining the jurisdiction on this appeal is as follows:

Act of Feb. 13th, 1925, Ch. 229, 43 Stat. 936.

U. S. Code, Title 28, Sec. 344 (a).

Judicial Code, Sec. 237a, as Amended by Act of Feb. 13, 1925.

The appeal as substituted for a writ of error is covered by the following:

Act of Jan. 31, 1928, Ch. 14, 45 Stat. 54.

Act of April 26, 1928, Ch. 440, 45 Stat. 466.

(b). The date of the judgment appealed from has already been indicated as has also been the date of the allowance of the appeal by the Chief Justice of the Supreme Court of the State of Minnesota.

As thus shown, all of the proceedings with respect to perfecting the appeal were had within thirty days of the rendition of the judgment appealed from; the record on appeal transmitted and the appeal docketed in this case within substantially the same time.

(c) The nature of the case and the ruling of the Court below has already been indicated and the case is thus brought within the statutory provision as one where there was brought in question the controversy challenges the validity of a state statute, on the ground of its repugnance to the Constitution of the United States and the decision of the highest court of the state in which a decision in the suit could be had was in favor of the statute's validity.

(d) As the particular provision of the jurisdictional statute here involved is substantially the same as that provided by Act of September 24, 1789, Ch. 20, Sec. 25; was retained by the Amendatory Act of Feb. 5, 1867, Ch. 28; carried into the Revised Statutes as Sec. 709 and thence into the Judicial Code of 1911 as Sec. 237, a citation of cases claimed to sustain the jurisdiction would cover the field of Federal procedure from the beginning.

It is assumed that this is not required and reference will therefore be limited to the following more recent cases:

Merchants National Bank vs. Richmond, 256 U. S. 635.

Eureka Pipe Line Co. vs. Hallanan, [illegible]

DeJonge-Walker Co. vs. Bondurant, 267 U. S. [illegible]

Dorchy vs. Kansas, 272 U. S. 306.

Warehouse Co. vs. Tobacco Growers, 276 U. S. 71.

While not pertinent to the precise jurisdictional question here involved, reference *arguendo* may be made to the extended and scholarly review of the broad subject of jurisdiction in *King Mfg. Co. vs. Augusta*, 277 U. S. 100, in both the prevailing and dissenting opinions.

Respectfully submitted,

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